

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.809 OF 2006

Aman Khemka : Petitioner

V/s.

HDFC Bank Ltd. & Ors. : Respondents

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Mr.A.P.Mundargi i/b. Mr.T.N.Tripathi & Co., for the
petitioner.

Mr.Rajesh More, Addl. Public Prosecutor for the State.

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CORAM : R.S.MOHITE, J.

DATE : APRIL 25, 2006.

P.C.

1. This petition seeks to quash and set aside the proceedings under section 138 of the Negotiable Instruments Act, 1881 which are the subject-matter of complaint No.934/S/2003. It also seeks to quash and set aside the order dated 17.3.2006 passed in Criminal Revision Application No.170 of 2006 by which the Sessions Court has rejected the revision. The points which are sought to be argued are that there are no sufficient averments as required by the judgment of the apex Court in the case of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & another (2005 (2) Bom.C.R.(Cri.) 696.

2. On a perusal of the complaint, I find that there is averment to the effect that the concerned Directors were/are in charge of and responsible to accused No.1 for the conduct of its business and day-to-day administration and management. My attention is drawn to an order dated 12.1.2006 passed by the Sessions Court quashing the complaint against one of the co-accused being accused no.5. The said order has been passed on the footing that the decision in the case of S.M.S. Pharmaceuticals Ltd. lays down that there must be a positive role attributed to a particular Director and in the absence thereof, such a complaint is not sustainable. I am not in agreement with the reasoning given by the Sessions Judge.

3. In the circumstances, there is no merit in the petition and the same is rejected.

R.S. MOHITE, J.